

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 108 be amended to read as follows:

- 1 Page 5, between lines 3 and 4, begin a new paragraph and insert:
- 2 "SECTION 8. IC 22-6-5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2006]:
- 5 **Chapter 5. Employer Notification Before Plant Closings and**
- 6 **Mass Layoffs**
- 7 **Sec. 1. As used in this chapter, "affected employees" means**
- 8 **employees who may reasonably be expected to experience an**
- 9 **employment loss as a consequence of a proposed plant closing or**
- 10 **mass layoff.**
- 11 **Sec. 2. (a) As used in this chapter, subject to subsection (b),**
- 12 **"employer" means an individual, a partnership, an association, a**
- 13 **limited liability company, a corporation, a business trust, a state or**
- 14 **local government or agency, or an agent or officer of any of those**
- 15 **entities, employing at least fifty (50) individuals in Indiana.**
- 16 **(b) The term does not include the federal government, a**
- 17 **corporation wholly owned by the federal government, or an Indian**
- 18 **tribe.**
- 19 **Sec. 3. (a) As used in this chapter, subject to subsection (b),**
- 20 **"employment loss" means:**
- 21 **(1) an employment termination, other than a discharge for**
- 22 **cause, voluntary departure, or retirement;**
- 23 **(2) a layoff exceeding six (6) months; or**
- 24 **(3) a reduction in hours of work of more than fifty percent**
- 25 **(50%) during each month of a six (6) month period.**
- 26 **(b) The term does not include a closing or layoff that is the**
- 27 **result of the relocation or consolidation of part or all of an**
- 28 **employer's business if, before the closing or layoff:**
- 29 **(1) the employer offers to transfer the employee to a different**
- 30 **site of employment within a reasonable commuting distance**
- 31 **with a break in employment of not more than six (6) months;**
- 32 **or**

1 (2) the employer offers to transfer the employee to any other
2 site of employment regardless of distance with a break in
3 employment of not more than six (6) months, and the
4 employee accepts the transfer within thirty (30) days after
5 the later of:

6 (A) the offer; or

7 (B) the closing or layoff.

8 Sec. 4. As used in this chapter, "mass layoff" means a
9 reduction of force that:

10 (1) is not the result of a plant closing; and

11 (2) results in an employment loss at a single site of
12 employment during any thirty (30) day period for at least
13 thirty-three percent (33%) of the employees.

14 Sec. 5. As used in this chapter, "plant closing" means the
15 permanent or temporary shutdown of a single site of employment,
16 or one (1) or more facilities or operating units within a single site
17 of employment, if the shutdown results in an employment loss at
18 the single site of employment during any thirty (30) day period for
19 at least twenty (20) employees.

20 Sec. 6. As used in this chapter, "political subdivision" has the
21 meaning set forth in IC 36-1-2-13.

22 Sec. 7. As used in this chapter "regular rate" has the meaning
23 set forth in IC 22-2-2-4(k)(3).

24 Sec. 8. As used in this chapter, "representative" means an
25 exclusive representative of employees within the meaning of:

26 (1) Section 158(f) or 159(a) of the National Labor Relations
27 Act (29 U.S.C. 151 et seq.); or

28 (2) Section 152 of the Railway Labor Act (45 U.S.C. 151 et
29 seq.).

30 Sec. 9. (a) This chapter does not apply to a plant closing or
31 mass layoff in the following cases:

32 (1) The closing is:

33 (A) of a temporary facility; or

34 (B) the result of the completion of a particular project or
35 undertaking; and

36 the affected employees were hired with the understanding
37 that their employment was limited to the duration of the
38 facility, project, or undertaking.

39 (2) The closing or layoff constitutes a strike or lockout not
40 intended to evade the requirements of this chapter.

41 (b) An employer is not required to provide the written notice
42 under section 10 of this chapter when permanently replacing a
43 person who is considered to be an economic striker under the
44 National Labor Relations Act (29 U.S.C. 151 et seq.).

45 Sec. 10. (a) An employer shall serve written notice of a plant
46 closing or mass layoff not later than sixty (60) days before the date
47 of the closing or layoff to:

48 (1) each representative of the affected employees, or if there
49 is no representative at the time of the notice, each affected
50 employee;

51 (2) the department of workforce development; and

(3) the chief elected official of each political subdivision within which a plant closing or mass layoff is to occur.

(b) The mailing of notice to an employee's last known address or the inclusion of the notice with the employee's paycheck are acceptable methods for fulfilling the employer's obligation to give notice to each affected employee.

Sec. 11. (a) An employer is not required to provide the notice required by section 10 of this chapter if:

(1) at the time that the notice would have been required:

(A) the employer was actively seeking capital or business that, if obtained, would enable the employer to avoid or postpone the plant closing or mass layoff; and

(B) the employer reasonably and in good faith believed that giving the notice would have precluded the employer from obtaining the needed capital or business;

(2) the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that the notice would have been required; or

(3) the closing or mass layoff is the result of a natural disaster.

(b) An employer shall give as much notice as is practicable under the circumstances described in subsection (a), including a brief statement of the basis for reducing the notice period.

Sec. 12. A layoff of more than six (6) months that at its outset was announced as a layoff of six (6) months or less shall be treated as an employment loss under this chapter, unless:

(1) the extension beyond six (6) months is the result of business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and

(2) notice is given at the time that an extension beyond six (6) months becomes reasonably foreseeable to the employer.

Sec. 13. Employment losses for more than one (1) group at a single site of employment, each of which is less than the minimum number of employees specified in section 4 or 5 of this chapter for a plant closing or a mass layoff, but that together exceed that minimum number and occur within any ninety (90) day period, are considered to be a plant closing or a mass layoff for purposes of this chapter, unless the employer demonstrates that the employment losses are:

(1) the result of separate and distinct actions and causes; and

(2) not an attempt by the employer to evade the requirements of this chapter.

Sec. 14. (a) In the case of a sale of part or all of an employer's business:

(1) up to and including the effective date of the sale, the seller; and

(2) after the effective date of the sale, the purchaser; is responsible for providing the notice required by section 10 of this chapter.

(b) Notwithstanding any other provision of this chapter, an individual who is an employee of the seller as of the effective date of a sale shall be considered an employee of the purchaser immediately after the effective date of a sale for the purpose of receiving the notice required by section 10 of this chapter.

Sec. 15. (a) As used in this section, "aggrieved employee" means an employee who:

(1) worked for an employer making a plant closing or mass layoff; and

(2) as a result of the employer's failure to give the notice required by section 10 of this chapter, did not receive the required notice, either directly or through the employee's representative.

(b) If an employer violates this chapter, an aggrieved employee may commence an action for the employee or on behalf of other employees similarly situated, or both, in the circuit or superior court of the county in which the violation is alleged to have occurred or in which the employer transacts business.

(c) The court shall award the following to each aggrieved employee who suffers an employment loss as a result of the employer's violation of this chapter:

(1) Back pay for each day of violation at a rate of compensation not less than the greater of:

(A) the average regular rate received by the employee during the three (3) years before the date of the closing or layoff; or

(B) the final regular rate received by the employee.

(2) Benefits under an employee benefit plan described in 29 U.S.C. 1002, including the cost of medical expenses incurred during the employment loss that would have been covered under an employee benefit plan if the employment loss had not occurred.

(3) Costs and reasonable attorney's fees.

(d) The employer's liability under subsection (c) is calculated for the period of the violation, up to a maximum of sixty (60) days, but not more than fifty percent (50%) of the number of days that the employee was employed by the employer.

(e) The amount for which an employer is liable under this section to an aggrieved employee is reduced by the following:

(1) Wages paid by the employer to the employee for the period of violation.

(2) A voluntary and unconditional payment by the employer to the employee that is not required by a legal obligation.

(3) A payment by the employer to a third party or trustee (such as premiums for health benefits or payments to a defined contribution pension plan) on behalf of and attributable to the employee for the period of the violation.

(4) A monetary equivalent equal to the amount of service credited to the employee for all purposes under a defined benefit pension plan for the period of violation.

(f) An employer that violates this chapter with respect to the notice required to be given to a political subdivision under section 10(a)(3) of this chapter commits a Class C infraction for each day that a violation occurs, up to a maximum of sixty (60) days.

(g) It is a defense to a violation of this chapter that:

(1) the act or omission that violated this chapter was in good faith; and

(2) the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter.

(h) A court does not have the authority to enjoin a plant closing or mass layoff for violation of this chapter.

(i) The remedies provided for in this section are the exclusive remedies for any violation of this chapter.

Sec. 16. (a) The rights and remedies provided to employees by this chapter are in addition to, and not instead of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect those rights and remedies, except that the period of notification required by this chapter runs concurrently with any period of notification required by contract or any other statute.

(b) A notice given by an employer that meets the requirements of the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) meets the requirements of this chapter.

Sec. 17. The commissioner of the department of workforce development may adopt rules under IC 4-22-2 to implement this chapter, including uniform standards by which employers may provide for appropriate service of notice required by this chapter."

Page 5, after line 5, begin a new paragraph and insert: "SECTION 10. [EFFECTIVE JULY 1, 2006] (a) Notwithstanding IC 22-6-5-16, as added by this act, the commissioner of the department of workforce development shall carry out the duties imposed upon the commissioner under IC 22-6-5-16, as added by this act, under interim written guidelines approved by the commissioner.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under IC 22-6-5-16, as added by this act.

(2) June 30, 2007.

SECTION 11. [EFFECTIVE JULY 1, 2006] IC 22-6-5, as added by this act, applies to plant closings and mass layoffs that are scheduled to occur after August 31, 2006."

Renumber all SECTIONS consecutively.
(Reference is to SB 108 as printed January 27, 2006.)

Senator CRAYCRAFT